IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 7541 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SANJAYKUMAR NATHURAM JAIN S/O. LATE NATHU RAM JAIN & 1 - Applicant(s)

Versus

THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR HITESH N DAVE for Applicant(s) : 1 - 2.
PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,
UNSERVED-REFUSED (N) for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 03/10/2007

ORAL JUDGMENT

1. This application has been filed by the original accused Nos.2 and 3 praying that the order passed by the learned 9th Additional

Senior Civil Judge & J.M.F.C., Surat on 7.7.2005 in private complaint No.41 of 2005 be quashed.

2. Respondent No.2 herein had lodged a complaint before the said Court against the present applicants and one Mr. Deepak Jain, who is respondent No.3 herein and accused No.1 in the complaint. It was alleged that respondent No.3 had some business transactions with the complainant and issued cheque dated 29.4.2005 drawn on Financial Co-operative Bank Ltd. for an amount of Rs.25,000/-. However, on presentation, the cheque was dishonoured with an endorsement “funds insufficient”. In order to involve the present applicants, the complainant had also levelled allegations that they were parties from the very outset in trying to cheat the complainant. The learned Magistrate on 7.7.2005 issued a process to further inquire into the commission of the offence punishable under Section 138 of Negotiable Instrument Act and at that stage, the applicants have approached this Court seeking quashing of the complaint as well as the process issued by the learned Magistrate thereon.

3. Though duly served, no one appears for respondent No.2 i.e. the original complainant.

4. Having heard learned advocate Mr. Dave for the applicant and learned A.P.P. Mr. Mengdey for the State, it is clearly borne

out from the record that the cheque in question was issued by respondent No.3 and not by the applicants herein. It is also not the allegation of the complainant that the applicants are the Directors of the Company on whose behalf the cheque was issued. In fact, respondent No.3 is the sole proprietor of the business concern. Therefore, when the cheque has not been issued by the applicants and the applicants had no relation with the proprietary concern for and on whose behalf, the cheque was issued, it is difficult to understand how the applicants can be prosecuted for the dishonour of the cheque. In that view of matter, the process having been issued by the learned Magistrate only under the provisions of Negotiable Instrument Act and allegations made by the complainant in the complaint even taken on the face value do not constitute an offence punishable under the said Section qua the applicants herein. The complaint as well as process issued thereon by the learned Magistrate are required to be quashed.

5. In the result, the application is allowed. The complaint as well as the order passed by the learned Magistrate on 7.7.2007 thereon are quashed qua the applicants herein only.

6. Application is disposed of accordingly. Rule is made absolute.

(AKIL KURESHI, J.)

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